

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In Re Applications of:                   )  
  )  
JAMES A. KAY, JR.                        )  
  ) DOCKET No.: 94-147  
Licensee of 152                            )  
Part 90 licenses in the                    )  
Los Angeles, California area.            )

Room A-363  
The Portals Building  
445 12th Street, S.W.  
Washington, D.C.

Tuesday,  
December 29, 1998

The parties met, pursuant to the notice of the  
Judge, at 9:00 a.m.

BEFORE: HON. JOSEPH CHACHKIN  
Chief Administrative Law Judge

APPEARANCES:

On behalf of James A. Kay, Jr.:

AARON P. SHAINIS, Esq.  
Shainis & Peltsman, Chartered  
1901 L Street, N.W.  
Suite 290  
Washington, D.C. 20036  
(202) 293-0011

ROBERT J. KELLER, Esq.  
Law Office of Robert J. Keller, P.C.  
4200 Wisconsin Avenue, N.W.  
Suite 106, Box 233  
Washington, D.C. 20016-2157  
(301) 320-5355

Heritage Reporting Corporation  
(202) 628-4888

APPEARANCES: (Cont'd)

On Behalf of the Federal Communications  
Commission:

JOHN J. SCHAUBLE, Esq.  
Enforcement and Consumer Information Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 8308  
Washington, D.C. 20554  
(202) 418-0797

WILLIAM H. KNOWLES-KELLETT, Esq.  
Commercial Wireless Bureau  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, Pennsylvania 17325

I N D E X

| <u>WITNESSES:</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VOIR DIRE</u> |
|-------------------|---------------|--------------|-----------------|----------------|------------------|
| Roy Jensen        | 1461          | 1506         | 1524            |                |                  |

E X H I B I T S

|                           | <u>IDENTIFIED</u> | <u>RECEIVED</u> | <u>REJECTED</u> |
|---------------------------|-------------------|-----------------|-----------------|
| <u>James A. Kay, Jr.:</u> |                   |                 |                 |
| 1                         | 1508              | 1516            |                 |

|                |            |                |            |
|----------------|------------|----------------|------------|
| Hearing Began: | 9:00 a.m.  | Hearing Ended: | 10:55 a.m. |
| Recess Began:  | 10:12 a.m. | Recess Ended:  | 10:24 a.m. |

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1                                P R O C E E D I N G S

2                                JUDGE CHACHKIN: We're on the record. Next  
3 witness.

4                                MR. KNOWLES-KELLETT: We have one preliminary  
5 matter, Your Honor.

6                                JUDGE CHACHKIN: Go ahead.

7                                MR. SCHAUBLE: Your Honor, a couple of days ago  
8 Mr. Keller inquired about a letter from the FCC that -- a  
9 response from Carla Pfeifer which was an exhibit. We  
10 searched our files and we've been able to find a copy of the  
11 letter. It is not the best copy but it is what we were able  
12 to find. We'll provide a copy.

13                               JUDGE CHACHKIN: Is this a Commission letter?

14                               MR. SCHAUBLE: Yes, Your Honor.

15                               MR. KNOWLES-KELLETT: A Commission letter that she  
16 was responding to.

17                               JUDGE CHACHKIN: Oh, I see. I thought there was  
18 also a Commission resolution in this matter, wasn't there?

19                               MR. KNOWLES-KELLETT: I believe that what  
20 happened, Your Honor, was that the application was granted.

21                               JUDGE CHACHKIN: So there wasn't any further  
22 communication?

23                               MR. KNOWLES-KELLETT: We'll have to ask the  
24 witness.

25                               JUDGE CHACHKIN: All right.

1 MR. KNOWLES-KELLETT: The normal course would be  
2 that we'd make an inquiry while an application is pending.  
3 If the information is satisfactory the answer is that you  
4 get your license in the mail.

5 JUDGE CHACHKIN: What date is this letter?

6 MR. KELLER: This letter is dated June 15, 1987,  
7 Your Honor.

8 MR. SCHAUBLE: I believe it is July 15.

9 MR. KELLER: July 15, excuse me.

10 JUDGE CHACHKIN: And you intend to inquire from  
11 her concerning the same matter as is covered in this letter?

12 MR. KNOWLES-KELLETT: Basically, Your Honor, what  
13 we think is pertinent is nothing that came out as a result  
14 of this letter.

15 JUDGE CHACHKIN: But it covers the same period?

16 MR. KNOWLES-KELLETT: It covers the fraud in  
17 obtaining this license.

18 MR. SHAINIS: But the Commission -- Your Honor, if  
19 I may be heard on this. The Commission apparently wrote a  
20 letter asking questions concerning details relative to Ms.  
21 Pfeifer's application. The questions that were asked her,  
22 while it didn't say fraudulent the questions were concerning  
23 what she had done relative to the application, events that  
24 occurred.

25 She responded to the letter and the Commission

1 granted the application. I don't believe -- I mean, it  
2 seems to me it is a closed event now. The Bureau is  
3 attempting now to relitigate these matters, though they  
4 haven't been litigated before. I mean, it really is the  
5 same thing that you are inquiring about and the Commission  
6 had all of these facts in front of them, in fact they asked  
7 the questions about it and they chose, in light of the  
8 response to grant the application.

9 MR. SCHAUBLE: Your Honor, if I may be heard on  
10 this. We believe the record will show that in the response  
11 to this letter, which we believe was prepared by Mr. Kay,  
12 there is an invoice, a check, and lease agreement prepared  
13 and we believe Ms. Pfeifer's testimony will show that these  
14 documents were manufactured specifically in connection with  
15 response to this letter and that while a check to the  
16 Commission purporting to show that Ms. Pfeifer had paid for  
17 the equipment was provided to the Commission, what was not  
18 provided was the fact that Mr. Kay then wrote a check back  
19 to Ms. Pfeifer, a check for the same amount. What was going  
20 on here was an attempt to give an appearance that Ms.  
21 Pfeifer had paid for the equipment when in fact she was not  
22 doing so.

23 MR. SHAINIS: Are you suggesting -- I don't think  
24 you are but I just want to make sure I understand it -- that  
25 Ms. Pfeifer, in her correspondence to the FCC, somehow

1       dissembled or misrepresented. You are saying that Ms.  
2       Pfeifer signed the letter. Are you saying that Ms. Pfeifer  
3       dissembled and misrepresented things to the Commission?

4               MR. KNOWLES-KELLETT: Yes.

5               MR. SHAINIS: If that is the case shouldn't Ms.  
6       Pfeifer be on here? The action should be against her, not  
7       against Mr. Kay.

8               MR. SCHAUBLE: Your Honor, the record will show  
9       that Mr. Kay prepared this response and...

10              JUDGE CHACHKIN: She signed it?

11              MR. KNOWLES-KELLETT: She signed it.

12              MR. SCHAUBLE: She did sign it at Mr. Kay's  
13       request.

14              JUDGE CHACHKIN: But she signed it?

15              MR. KNOWLES-KELLETT: She was an occasional  
16       employee of Kay. He asked her...

17              JUDGE CHACHKIN: This letter -- can I see this  
18       letter?

19              MR. SHAINIS: Certainly.

20              MR. SCHAUBLE: We have a copy for him.

21              MR. KNOWLES-KELLETT: We have a copy. She is on  
22       the plane already, Your Honor.

23              MR. SHAINIS: What difference does that make?

24              MR. KNOWLES-KELLETT: Well, that he had previously  
25       ruled -- you had previously ruled, Your Honor, that you

1 would hear the testimony. I think you are quite capable of  
2 giving it the appropriate weight or limiting it at the time  
3 you find that it's not appropriate.

4 MR. SHAINIS: But that's not the criteria --

5 JUDGE CHACHKIN: This is a letter to Ms. Pfeifer.  
6 Where's Ms. Pfeifer's response?

7 MR. KNOWLES-KELLETT: It is in the Bureau exhibit,  
8 Your Honor. I don't remember the number.

9 JUDGE CHACHKIN: All right. The Bureau wants to  
10 go ahead and put her on they certainly can be impeached with  
11 their own testimony, with their own letter. You made a  
12 statement that there wasn't anything improper. So, we'll  
13 see where we go from there. It also seems strange that the  
14 Bureau is willing to delve as far back as 1987 but, again,  
15 I'll give the Bureau an opportunity to put on their case.

16 MR. KNOWLES-KELLETT: Mr. Jensen.  
17 Whereupon,

18 ROY JENSEN

19 having been first duly sworn, was called as a witness herein  
20 and was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. KNOWLES-KELLETT:

23 Q Good morning. Would you please state your name  
24 for the record?

25 A Roy Jensen, R-O-Y J-E-N-S-E-N.



1 Q And your mailing address, Mr. Jensen?

2 A P.O. Box 6282, Beverly Hills, California 90212.

3 Q Okay. I'm going to ask you a number of questions.

4 If at any point my questions are not clear please let me

5 know. We want a clear record, you know, that you're

6 answering the questions that I ask and understand them.

7 The Judge, in this case, has entered a

8 sequestration order. A sequestration order allows us to get

9 the best testimony from all the witnesses. What that means

10 is that you are not allowed to talk about anything that we

11 ask you today with any of the subsequent witnesses. Once

12 they have testified you are free to talk to them again about

13 the subject matters of this proceeding.

14 A Okay.

15 Q Do you understand that?

16 A Yes, I do.

17 Q Now, the witnesses who have not testified yet are

18 Mark Sobel, Carla Pfeifer, Kevin Hessman, Vincent Cordaro,

19 Barbara Ashauer, and Thomas Gerrad. You may or may not know

20 all of them but if you come into contact with any of them

21 please do not discuss this until you know that they have

22 testified.

23 A I understand.

24 Q Have you discussed with anybody, who has

25 previously testified, their testimony?

1           A     I have not discussed these matters with anyone,  
2     except during the deposition that was taken last year or  
3     early this year, rather.

4           Q     Okay.

5           MR. SHAINIS: Excuse me. Could you ask the  
6     witness just if he could raise his voice a little bit.

7           THE WITNESS: I'll try.

8           MR. SHAINIS: Thank you.

9           BY MR. KNOWLES-KELLETT:

10          Q     Are you currently employed in the radio business,  
11     Mr. Jensen?

12          A     No, I am not.

13          Q     How long since you have been in the radio  
14     business?

15          A     I believe I left Southland Communications around  
16     May of 1992. I have not worked in the radio business since.

17          Q     Okay. When did you start working for Mr. Kay?

18          A     I believe it was spring of 1990, I'm not sure of  
19     the exact month.

20          Q     Can you describe the circumstances under which you  
21     came to work for Mr. Kay?

22          A     Sure. I had originally been hired by a company  
23     called Portable Clinic. I think it was in November of 1989.  
24     Sometime in the next, I'd say, three to six months there was  
25     a discussion between that company and Mr. Kay's company

1 about joining their operations. Eventually that led to an  
2 agreement to, in fact, move the two companies into shared  
3 new quarters and I became part of that combined company at  
4 that time, which became Southland Communications. There was  
5 then some dispute between the two principals of the  
6 companies and they separated and I stayed on with the new  
7 company, since the old company had essentially gone away and  
8 there was no place to go to work for them.

9 Q What was your title at Southland?

10 A After a relatively short time it became the  
11 General Manager title. Initially there was no title per se,  
12 it was kind of a best effort on everybody's part.

13 Q Now you say you worked for Southland, Southland is  
14 a DBA of Buddy Corp., is that correct?

15 A At this point I'm not sure that I remember the  
16 specific legalities. It was a DBA. I'm not sure which  
17 corporation it may have been under at this point.

18 Q What were your duties as general manager?

19 A I was kind of sort of the manager in the absence  
20 of Mr. Kay or, for day-to-day purposes, the person that  
21 dealt with the sales staff and essentially most things not  
22 technical in nature, such as radio repairs themselves,  
23 basically day-to-day running the business, making sure that  
24 people were there, that we took care of business, we ordered  
25 radios and dealing with the accounts to some extent, all on

1 the essentially retail or wholesale side.

2 Q Okay. Did you have any duties with respect to  
3 Lucky's Two-Way Radio?

4 A Not directly. There were duties that overlapped  
5 because customers would often be a common customer and they  
6 would have a licensing component and I would have a purchase  
7 or radio component. Sometimes part of the package that we  
8 presented to the customer would involve taking care of their  
9 licensing paperwork so that they could in fact use the  
10 radios that they were purchasing.

11 Q Did sales staff that you oversaw, did they work  
12 for Lucky's?

13 A Sales staff, generally speaking, worked for  
14 Southland. They were only the occasional employee for  
15 Lucky's, as I recall.

16 Q So there was a separate sales staff for Lucky's?

17 A I don't think they had a sales staff per se. They  
18 had an accountant that came in. They had Mr. Sobel that did  
19 technical work and field maintenance and so on but I think  
20 that was essentially not on an employee basis.

21 Q Okay, so who sold receiver service for Lucky's?

22 A Mr. Kay himself did sell some. Marc Sobel, I  
23 believe, sold some but then the sales staff at Southland, as  
24 part of their radio sales, did sell repeater service  
25 alongside of that.

1 Q Okay. Did you learn about Mr. Kay's operations at  
2 all outside of your duties as a general manager of Mr.  
3 Kay's?

4 A Essentially what I learned about Southland and/or  
5 Lucky's would be as part of discussions we had, essentially  
6 on company time, if you will, discussing management matters  
7 and so on.

8 Q Did Mr. Kay ever describe to you how he could  
9 cause interference to his competitors?

10 A He explained to me how it works and how it can be  
11 done and the impact it would have.

12 Q Okay. Could you describe those discussions, to the  
13 extent you recollect them?

14 A Well, there are several kinds of interference and  
15 some of it was explained to me just because of necessity,  
16 understanding customer problems where you can have somebody  
17 who has radios on one channel and another company has much  
18 more traffic comes on and they don't monitor the channel and  
19 they just step on the little guy, in a sense. That is a  
20 typical example of interference that is annoying to the  
21 customers.

22 Then you have more or less willful interference  
23 where somebody on purpose tries to drive somebody off a  
24 channel so that they can get the whole, essentially, place  
25 to themselves. You can do it either by, again, using

1 radios, overpowering the people that you want to get to stop  
2 using the radios or you can interfere with the repeater  
3 operations by dialing up their frequency and sending a  
4 signal to them. The true technical details I'm probably not  
5 qualified to discuss but the principle of it that if you can  
6 know somebody else's frequency you can put a signal on that  
7 frequency and you can block their communications.

8 Q Okay. Did Mr. Kay ever indicate to you that he  
9 did this?

10 A There were a couple of circumstances that he  
11 explained to me where he claimed to have done so. He showed  
12 me, on one occasion at least, how it could be done using a  
13 service monitor and dialing into some frequency, that I'm  
14 not aware the nature of but some frequency that he  
15 represented to be a repeater of some sort.

16 Q Could you describe the circumstances when he just  
17 said that he had done it?

18 A He had explained to me the different kinds of  
19 trunking systems that are available or were available at the  
20 time. Motorola had a distinction of having a different  
21 system then what we used with a Johnson format. One of the  
22 differences was that they had in their system 4 channels  
23 used for communications, basically management of the other  
24 channels that customers were talking on, so you might have  
25 16 channels of customers being able to talk and 4 channels

1 of, essentially, management functions for the system itself.

2 If you were successful in interfering with those  
3 four channels then there would be no communication because  
4 the system no longer knows how to route calls among the  
5 trunking channels. He stated to me that he had been able to  
6 put the Motorola system in what he called "fail safe,"  
7 meaning it would shut itself down because it no longer could  
8 manage its own affairs.

9 He did that by, apparently, blocking one channel  
10 out of the four and then a second channel out of the four  
11 until all four were blocked and then there would be no  
12 longer any communications. I don't know the duration but  
13 that was the representation that was made to me and one that  
14 I do remember pretty vividly.

15 Q Okay, when did he tell you this?

16 A Oh, I'm not sure about the exact date but it was  
17 during my employment. I believe we were in what we called  
18 the "tech area" at Lucky's where we have service monitors  
19 and so on, Mr. Kay used this for his own radio repairs and  
20 maintenance of his system.

21 Q So, that would -- just to be clear, that was  
22 sometime between spring 1990 and fall 1992, is that when  
23 your employment at Southland was?

24 A I think it was 5/92 that I left but during that  
25 time period.

1           Q     Okay. So during that time. Could you describe  
2     the circumstances? You said he demonstrated how this could  
3     be done to you?

4           A     Yes. He explained using what was a Motorola  
5     service monitor, which is a little bit like a TV set with a  
6     number of technical features on it. You can dial,  
7     essentially, any frequency, at least in the radio bands that  
8     we worked on, and you can send a signal on those frequency  
9     of varying strength. He explained how if you reach that  
10    threshold where the input of the repeater is reached you can  
11    in a sense lock onto that repeater and your signal is the  
12    signal it hears and since you are not sending any over  
13    traffic it just stops doing everything else why it waits for  
14    you to either release the channel or send it some meaningful  
15    business.

16          Q     Excuse my ignorance of the technical operations  
17    but I just want to be clear on this, what you do is you send  
18    a signal that says, "I want to make a call."

19          A     You dial up the frequency of the radio and  
20    normally when you key up a radio you send a signal to the  
21    repeater and when it locks on you then have the channel and  
22    if you then want to transmit voice or, I suppose, data or  
23    anything else you then have the conduit to do that through.  
24    But, if you don't send anything it simply sits there and  
25    holds because it is waiting for you to send your words and



1 then key so that the next person can key up and use the  
2 repeater but if you simply maintain adequate power to hold  
3 that open channel you are blocking anyone else from using it  
4 because it is only one person per frequency at a given time.

5 Q When he demonstrated this how long did he hold the  
6 channel open for?

7 A I don't think it was a very long time. It was  
8 kind of a demonstration of concept type thing. "See, this  
9 is how it happens." But, obviously, it proved that you can  
10 do this at will if you have the equipment and so on and the  
11 inclination to do that.

12 Q Okay. So, was this the same thing that he had  
13 said he had done at other times?

14 A It was my understanding --

15 MR. SHAINIS: Objection.

16 JUDGE CHACHKIN: Sustained.

17 BY MR. KNOWLES-KELLETT:

18 Q How did this differ from what he had said he had  
19 done at other times?

20 A It was my understanding that --

21 MR. SHAINIS: Objection.

22 JUDGE CHACHKIN: Sustained. He never said at  
23 other times, he said one instance. That is all we have in  
24 the record so far.

25 BY MR. KNOWLES-KELLETT:

1 Q Okay. Did Mr. Kay say he had done this type of  
2 thing at other times?

3 A I don't recall that he specifically stated another  
4 company that I would be able to cite to you. But, it was my  
5 impression that this was something that could conceivably  
6 have happened at times, although I don't know specifically  
7 what the company might have been that could have had this  
8 happen.

9 JUDGE CHACHKIN: Do you know for a fact that it  
10 was done at other times or you don't know for a fact?

11 THE WITNESS: I don't know an exact company. I do  
12 recall conversations along these lines.

13 JUDGE CHACHKIN: With whom?

14 THE WITNESS: With Mr. Kay. But, I do not recall  
15 that a particular company was named, only that language to  
16 the effect that he hung a carrier on the repeater or words  
17 to the effect that what he was essentially doing was  
18 blocking action but I don't recall that a specific company  
19 name was mentioned.

20 BY MR. KNOWLES-KELLETT:

21 Q When you say "hung a carrier" is that term what  
22 you are describing?

23 A That's the phrase that has stuck in my mind as  
24 describing dialing into a repeater with a signal and then  
25 holding it open without sending any traffic on it, yes.

1           Q     Okay. I think earlier you described that he had  
2     told you that he had held four channels open at some point?

3           A     Yes, that would be the case of the Motorola  
4     system, with the four control channels, and if you block the  
5     one then it manages itself by using the other three  
6     channels, if you block two out of the four it manages among  
7     the last two, if you block the third channel it only can  
8     provide traffic or management control on the fourth channel,  
9     and if you block that then the radio goes dead because it  
10    doesn't have any ability to function anymore. At least that  
11    is the representation that was made to me on the functioning  
12    of the Motorola system.

13          Q     Is that something different than hanging a  
14    carrier?

15          A     No, that would involve essentially doing it four  
16    times in succession and maintaining one, two, three, four  
17    until the fourth one shuts down.

18          Q     Okay. So, do you recall a time when Mr. Kay said  
19    anything about having blocked all four channels?

20          A     That was --

21               MR. SHAINIS: Objection, leading the witness.

22               JUDGE CHACHKIN: Sustained.

23               BY MR. KNOWLES-KELLETT:

24          Q     Do you recall any -- please describe any time when  
25    Mr. Kay said he hung all four channels.

1 MR. SHAINIS: Objection, form of the question.

2 JUDGE CHACHKIN: I'll permit it.

3 THE WITNESS: It is my recollection that the whole  
4 area of discussion came up as a result of me saying, "How do  
5 you know that fail safe, essentially, shuts down the  
6 system?" which was the phrase used to describe any system,  
7 out of self-protection in a sense, shuts down and refuses to  
8 continue to operate in a normal repeater fashion. That is  
9 when the conversation started about how he knew because it  
10 had happened. On some back and forth discussion about it I  
11 then learned he had actually done it. I don't know the  
12 reasoning behind it but the representation was that he had  
13 done the one, two, three, four channels and indeed the  
14 system did shut down. That is how -- it was a known fact  
15 within the company that it did work that way, it wasn't just  
16 Motorola literature saying so, it did work that way in real  
17 world.

18 Q When you say "Motorola literature" did you ever  
19 look at this Motorola literature?

20 A No, I did not.

21 Q Did you ever look into this matter, the technical  
22 details of this matter, to see if it would work outside of  
23 Mr. Kay's telling you?

24 A I did not look into the matter as such but I  
25 understand from general conversation, I suppose, that that

1 is the description of how the system is supposed to work,  
2 that if it is overloaded and, essentially, becomes unable to  
3 function as intended it then shuts itself down, presumably  
4 to reset and then be restarted again and then work normally  
5 again, akin to rebooting a computer, I suppose.

6 Q Okay. You, at Southland did you operate Motorola  
7 systems at all?

8 A I believe Mr. Kay may have had an interest in the  
9 systems. Principally what he did was an E.F. Johnson  
10 trunking system or any number of E.F. Johnson trunking  
11 systems.

12 Q So, the radios you worked on were primarily radios  
13 that operated off of E.F. Johnson?

14 A Yes, they were using what was called an L.T.R.  
15 Trunking Format.

16 Q So, your familiarity with Motorola equipment was  
17 just through what Mr. Kay and others told you?

18 MR. SHAINIS: Objection, leading the witness.

19 MR. KNOWLES-KELLETT: I'll rephrase, Your Honor.

20 JUDGE CHACHKIN: Go ahead.

21 BY MR. KNOWLES-KELLETT:

22 Q How did you become familiar with the operations of  
23 Motorola equipment?

24 A Well, I had a layman's understanding of radios  
25 from having worked at Portable Clinic prior to Southland and

1 prior to that having worked with some usage of two-way  
2 radios as a user. So, I had a basic understanding of the  
3 principles of two-way communications but not truly the  
4 technical side except that there were different formats and  
5 so on.

6 But, as part of learning to know what I needed to  
7 know to function I learned the differences between a  
8 Motorola system and an E.F. Johnson system where all  
9 channels are used to talk on and it controls itself by using  
10 a different logic for doing that without using a channel  
11 exclusively dedicated to management of the other channels,  
12 that is a distinction that was talked about frequently as a  
13 differentiating factor between efficiencies of systems and  
14 so on. But, I never did go into technical details. I was  
15 never a technician and I had no interest, I suppose, in  
16 being a technician. But, on a layperson's level I did have  
17 a good understanding of how it worked.

18 Q Were there legitimate reasons to know why this  
19 worked, as opposed to causing purposeful interference?

20 A Yes. The customers would have to make a choice in  
21 the marketplace between operators of different kinds of  
22 systems. If you can offer 16 channels or 20 channels you  
23 can conceivably make a difference in selling your product to  
24 someone. Conceivably, at least on paper, you should have an  
25 advantage in the minds of the customer that you have 20

1 channels available, rather than 16.

2 Q What I'm wondering is is there a legitimate reason  
3 to know potential sources of interference, as opposed to  
4 just legitimate know the technical details of your  
5 competitors' systems?

6 A Well, I suppose in a backwards way, if a customer  
7 complains about the interference, being able to track it  
8 down is a valuable skill. I don't think there is any  
9 business reason to dial into another customer's or any other  
10 company's equipment and essentially talk to it. I can't see  
11 any business reason for that.

12 Q When Mr. Kay demonstrated this to you -- could you  
13 please describe what exactly you saw?

14 MR. SHAINIS: Objection. When Mr. Kay  
15 demonstrated what?

16 MR. KNOWLES-KELLETT: The testimony said that Mr.  
17 Kay demonstrated how he could hang a repeater on a Motorola  
18 system. I am asking for what he saw when Mr. Kay  
19 demonstrated this.

20 JUDGE CHACHKIN: All right, go ahead.

21 THE WITNESS: My recollection is that, being  
22 seated at a service monitor, some frequency, that I probably  
23 would not have known at the time, I may have seen the  
24 numbers going but I may not have registered what they were  
25 as such, that a frequency was dialed in on the equipment and

1     then power of the signal was then increased at some point  
2     until it indicated that it had locked on the repeater or a  
3     connection to the repeater.

4                     BY MR. KNOWLES-KELLETT:

5             Q     Who changed the power?

6             A     That would be Mr. Kay. I never played with the  
7     service monitors. But, a demonstration essentially akin to  
8     turning up the volume on a stereo until it was enough and  
9     you reach a threshold when the equipment locks on and past  
10    that you don't need any more power -- you are maintaining  
11    contact.

12            Q     Could you tell that the equipment locked on? How  
13    could you tell that the equipment locked on?

14            A     I don't remember the specific nature of the  
15    feedback the equipment gives but it does give you an  
16    indication that it has when essentially you are in. It has  
17    a scope of some sort on it. I don't recall the specifics of  
18    what it shows, but I remember at the time that I understood  
19    it to have reached a level where it now had a connection to  
20    the equipment.

21            Q     Okay. I think you said on a Motorola system there  
22    are four channels that need to be blocked before the  
23    repeater has to shut down. Did you see him block four  
24    channels? How many channels did you see him block?

25            A     In this case I believe it was only the one channel



1 for the one frequency, assuming that in fact the frequency  
2 was what it was represented to be but it was the one  
3 channel, it was not all four of them. But, the principle  
4 was demonstrated to me and I understood the consequences of  
5 continuing that on additional channels.

6 Q Okay. What did Mr. Kay tell you was happening as  
7 he demonstrated this?

8 A I think his explanation was something akin to what  
9 I just described to you, you select the frequency that you  
10 want to communicate on, you then -- if the channel is busy  
11 you can't get in but once the other person talking, the  
12 other equipment stops communicating then it is your chance  
13 and if you then dial the equipment up your signal will then  
14 essentially be the one reaching the repeater and once it  
15 does if you then don't relinquish you are controlling that  
16 repeater channel.

17 (Discussion held off the record.)

18 Q Are you familiar with a company called  
19 Consolidated Financial Holdings?

20 A Yes.

21 Q What relationship do you have to that company?

22 A It was the DBA that I took out in anticipation of  
23 doing some project or another many years ago.

24 Q Approximately when did you take it out?

25 A I'm not sure if it was the late 1980s or maybe

1 1990 but it was either prior to or during the first year I  
2 was at Southland. It was unrelated to Southland when I did  
3 take out the DBA.

4 Q Did you ever conduct business under that name?

5 A In terms of billable chargeable services I did  
6 not.

7 Q What did you do under that name?

8 A I think it was used on proposals as if I would  
9 give you a document and say, "Would you like to be part of  
10 this venture?" It might have been used in a kind of  
11 informational type thing but it didn't go anywhere such that  
12 I ended up working in and I never pursued the project  
13 anymore.

14 Q Okay.

15 A I don't even remember specifically what the  
16 project was about now.

17 Q Did you file radio applications under the name  
18 Consolidated Financial Holdings?

19 A I believe I filed at least one.

20 Q Okay. Who prepared this application?

21 A They were brought to me by Mr. Kay. I presume  
22 that he actually filled them in but he brought them to me  
23 essentially filled out ready for signature.

24 (Discussion held off the record.)

25 Q What were the circumstances under which Mr. Kay

1 presented you these applications?

2 A My recollection is that --

3 MR. SHAINIS: Objection. The testimony was  
4 "application."

5 BY MR. KNOWLES-KELLETT:

6 Q Okay. This application.

7 A My recollection is that I was sitting somewhere in  
8 essentially the back office of Southland and he came up to  
9 me and basically said that it was an application and would I  
10 mind signing it. It was presented not in the manner of  
11 "Would you do me a favor?" More like, "I truly expect you  
12 to do this." I knew from having seen applications prepared  
13 similarly in the past that it appeared that if you worked at  
14 Southland you did sign some applications at some point. I  
15 understood the rationale for it. I did not know at the time  
16 what would result from it.

17 Q What was the rationale for it?

18 A In a competitive environment having loading  
19 available to sell radios on is a decided advantage. If you  
20 don't have a frequency for the customer you can sell him all  
21 the radios you want but you are giving some other guy down  
22 the street the revenues forever more and you can never get  
23 that customer back. If you have the capacity and you say,  
24 "I can put your radios on right now." then you can make a  
25 radio sale and you can get recurring revenue off of that

1       repeater service forever more.

2                       (Discussion held off the record.)

3               Q       So, if I understood you correctly, the rationale  
4       was to have a space for new customers?

5               A       Yes, you basically try to, to the extent you can  
6       manage, you try to obtain as many slots or frequency on a  
7       given frequency as you can. I presume the rules say that  
8       you are supposed to have a radio in service in order to get  
9       a license or to put it in service once you get a license.

10              I think radio shops would like to warehouse a few  
11     frequencies so it can sell onto them customers they don't  
12     yet have at the time they get the license. That is how  
13     another company's name being the license holder aids in the  
14     effort.

15              Q       When you say you presume that the rules say, does  
16     that mean that you don't know exactly what the rules say?

17              MR. SHAINIS: Objection as to form of question.

18              BY MR. KNOWLES-KELLETT:

19              Q       Do you know that the rules say this when you say  
20     that you presume?

21              MR. SHAINIS: Objection to form of the question.

22              JUDGE CHACHKIN: I'll overrule the objection.

23              THE WITNESS: It was my understanding that the  
24     rules essentially are intended to make sure that spectrum  
25     allocated via licenses are going to be used by end users or

1 by the holders of a license, that they are not going to be  
2 warehoused just keeping the competition from being able to  
3 put users onto the air. But, I wouldn't be able to cite the  
4 paragraphs and so on but it is my general understanding that  
5 that is the intent of the regulations.

6 BY MR. KNOWLES-KELLETT:

7 Q Do you have a specific understanding of why Mr.  
8 Kay asked you to sign this application?

9 A Well, it is also my understanding from the rules,  
10 and again, it is somewhat of a layperson's understanding. I  
11 was never a licensing specialist as such and I did not,  
12 except for the one or maybe a couple of occurrences when I  
13 might have signed a licensing document, I never pursued  
14 licensing as such. I never had a sideline of licensing for  
15 customers or anything else and it wasn't a focus of what I  
16 did.

17 But, you may not be eligible to have additional  
18 licenses if the licenses you have aren't fully utilized.  
19 So, an additional application from the same applicant would  
20 be rejected on the basis that they have unused capacity on  
21 existing licenses and haven't fulfilled the obligation of  
22 establishing a station or putting the units on the air.  
23 But, if a third party were to apply there is no presumption  
24 that they are not going to be utilizing that license and it  
25 will be granted and then it gets signed over at some later

1 date to the party that initially sought the license in the  
2 first place. So, the FCC basically doesn't know who the  
3 ultimate holder of a license will be.

4 Q Did Mr. Kay tell you that this was the reason you  
5 were to sign the licenses?

6 A I didn't just sign a license application itself, I  
7 signed a transfer document, I believe. I'm not sure what  
8 the number of the form is but it is one that allows the  
9 transfer of the license at some point. Presumably that got  
10 filed later on and the license transferred from the original  
11 license name to Mr. Kay.

12 JUDGE CHACHKIN: I'm going to strike that  
13 response. That wasn't responsive to your question. I'm  
14 going to strike that, that answer is not responsive.

15 BY MR. KNOWLES-KELLETT:

16 Q Okay. My question was did Mr. Kay tell you why  
17 you were signing the license application?

18 A Yes, my understanding was that he --

19 JUDGE CHACHKIN: Not "understanding". What do you  
20 recall Mr. Kay telling you.

21 THE WITNESS: I can't quote what he said.

22 JUDGE CHACHKIN: Well, give what you recall the  
23 best you can. Not your understanding but what you recall,  
24 best you can, what Mr. Kay said to you.

25 THE WITNESS: Okay. Keep in mind, I'm not

1 quoting.

2 JUDGE CHACHKIN: I understand that.

3 THE WITNESS: It was words to the effect of,  
4 "These slots are now available. I need to basically obtain  
5 a license for these slots. Can you do it for me now?" That  
6 was the nature of the conversation, with at least the  
7 presumption on my part that signing the transfer document  
8 meant that at a relatively short future date there would no  
9 longer be a license in my name and I would be out of the  
10 picture as far as the license holder, which in fact did  
11 happen.

12 BY MR. KNOWLES-KELLETT:

13 Q When you say that did happen, that did happen,  
14 these slots were assigned to somebody else?

15 A Yes, my license went away and it was assigned or  
16 transferred in some manner using that other form.

17 (Discussion held off the record.)

18 Q Do you know if you signed the assignment form at  
19 the same time you signed the original application or was it  
20 at some later date?

21 A No, I believe it was a package where I signed  
22 everything I signed for a particular license at one time.

23 Q Okay. What type of stations did Consolidated  
24 Financial Holdings operate?

25 A Well, I said it was a license that was put before

1 me. We did not have any radios, we did not obtain any  
2 radios. The license went away and the company still, in the  
3 sense that it was an entity at the time, never did have any  
4 radios.

5 Q Okay.

6 (Discussion held off the record.)

7 Did Consolidated Financial Holdings ever operate  
8 any repeaters?

9 A No, they did not.

10 Q Did they ever own any repeaters?

11 A No.

12 Q Did it ever have an agreement with Mr. Kay to  
13 operate any repeaters on their behalf?

14 A No.

15 Q Did you ever have an agreement with Mr. Kay to  
16 construct any repeaters?

17 A No.

18 Q I'd like to turn your attention to WTB Exhibit No.  
19 306 in that book. It is the tab marked 306.

20 JUDGE CHACHKIN: What volume is it?

21 MR. KNOWLES-KELLETT: It's in the 291 to 328, Your  
22 Honor.

23 THE WITNESS: WTB Ex. 306?

24 BY MR. KNOWLES-KELLETT:

25 Q Yes. Take just a second, if you will, and review



1       that document.

2                   (Pause.   Witness reviewing WTB Exhibit No. 306.)

3                   My question is could you describe what this  
4       document is?

5           A       Well, there are three pages --

6                   MR. SHAINIS:  Objection.  What relevance is  
7       witness's description of the document?  The document will  
8       speak for itself.

9                   JUDGE CHACHKIN:  I'll sustain the objection.

10                  BY MR. KNOWLES-KELLETT:

11           Q       Do you recognize the document?

12           A       Yes, I'm pretty sure this is the document I signed  
13       years ago.

14           Q       So, at the bottom of page one, is that your  
15       signature?

16           A       Yes.

17           Q       Turning to page three, can you tell me whose  
18       handwriting that is?

19           A       The initial line that's written in by hand might  
20       be mine.  I don't believe the rest would be.

21                   JUDGE CHACHKIN:  Which one is yours?

22                   THE WITNESS:  The one where my name is spelled,  
23       "Roy Jensen, DBA Consolidated Financial Holding."

24                  BY MR. KNOWLES-KELLETT:

25           Q       Do you recognize the handwriting on the other

Heritage Reporting Corporation  
(202) 628-4888

1 part?

2 A I'm not a handwriting expert but it is reminiscent  
3 of Mr. Kay's handwriting but I couldn't swear to it being  
4 that.

5 Q And on page three, I draw your attention to the  
6 part where it says, "These mobiles -- " Do you recognize  
7 this as an application to operate 37 mobiles on an SMR?

8 A I recognize page one, yes. I'm not sure that I  
9 have seen page three with the information that it has on it  
10 here.

11 Q Okay.

12 A As such. I don't recall having seen it filled out  
13 like this.

14 Q Okay. So, you didn't know whether -- did you not  
15 know what SMR these mobiles were to operate on?

16 MR. SHAINIS: Objection as to the form of the  
17 question.

18 BY MR. KNOWLES-KELLETT:

19 Q Do you recall knowing?

20 MR. SHAINIS: Objection.

21 THE WITNESS: My recollection is I saw the  
22 paperwork --

23 MR. SHAINIS: There's an objection.

24 JUDGE CHACHKIN: I'll overrule the objection.

25 THE WITNESS: I saw the paperwork, I signed the

1 paperwork and whatever life it took on after that I never  
2 saw the paperwork again.

3 (Discussion held off the record.)

4 BY MR. KNOWLES-KELLETT:

5 Q Okay. Did you ever indicate to Mr. Kay in any way  
6 that you wanted to operate 37 mobiles on an SMR, on his SMR?

7 A No.

8 (Discussion held off the record.)

9 Q Just quickly, if you could turn to WTB Exhibit No.  
10 307. Do you recognize that document?

11 A It looks like the license I received. I did  
12 receive a license in the mail at some point after having  
13 signed the document in the previous exhibit. Assuming that  
14 this in fact is the matching license this would have been  
15 what I received in the mail.

16 Q I'd like you to turn your attention to WTB Exhibit  
17 No. 315.

18 A Okay.

19 Q At the bottom of the page there is a listing --  
20 take a minute to review this document if you will?

21 A This is the one with "Vincent Cordaro" on top?

22 Q Yes, "Vincent Cordaro" on the top.

23 A Okay. Yes, I see my name on the bottom.

24 Q Okay.

25 A I'm not sure I've ever seen this document though.